

Rule 7, Ariz. R. Crim. P.

BAIL AND BOND – Surety’s ability to have bond exonerated under A.R.S. § 13-3974 and Rule 7.6(d)(2), Arizona Rules of Criminal Procedure — Revised 12/2009

A.R.S. § 13-3974 and Rule 7.6(d)(2), Arizona Rules of Criminal Procedure, provide procedures for a surety that has posted bond for a defendant to have the bond exonerated. A.R.S. § 13-3974 provides:

Exoneration of appearance bond

A surety may be relieved from liability on an appearance bond if the surety surrenders the defendant into the custody of the sheriff of the county in which the prosecution is pending and the sheriff reports the surrender to the court.

Rule 7.6(d)(2) states:

If the surety, in compliance with the requirements of A.R.S. § 13-3974, surrenders the defendant to the sheriff of the county in which the prosecution is pending, or delivers an affidavit to the sheriff stating that the defendant is incarcerated in this or another jurisdiction, and the sheriff reports the surrender or status to the court, the court may exonerate the bond.

Note that § 13-3974 requires that, to be relieved from liability, the surety must surrender the defendant to the sheriff **before** there is any breach of his terms of release. See *United Bonding Ins. Co. v. City Court*, 6 Ariz. App. 462, 464, 433 P.2d 642, 644 (1967).

Rule 7.6(c)(2) deals with forfeiture of the bond, while Rule 7.6(d) deals with exoneration of the bond. Both sections should be read to give the court discretion in deciding to forfeit or exonerate the appearance bond. *State v. Old West Bonding Co.*, 203 Ariz. 468, 474, ¶ 23, 56 P.3d 42, 48 (App. 2002). In determining whether to forfeit or exonerate the bond, the court should consider the following factors:

(1) whether the defendant's failure to appear due to incarceration arose from a crime committed before or after being released on bond; (2) the willfulness of the defendant's violation of the appearance bond; (3) the surety's effort and expense in locating and apprehending the defendant; (4) the costs, inconvenience, and prejudice suffered by the state as a result of the violation; (5) any intangible costs; (6) the public's interest in ensuring a defendant's appearance; and (7) any other mitigating or aggravating factors.

Id. at 475, ¶ 26, 56 P.3d at 49.

The court of appeals reviews an order exonerating a bail bond for abuse of discretion. *State v. Affordable Bail Bonds*, 198 Ariz. 34, 36, 9, 6 P.3d 339, 341 (App. 2000).